

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Violation: Title 18, United States
)	Code, Sections 1001(a)(1) and (2)
FRANK SCACCIA and)	and 2.
THERESA NEUBAUER)	

COUNT ONE

The SPECIAL JULY 2010 GRAND JURY charges:

1. At times material to this indictment:

Regulatory Background

a. The Safe Drinking Water Act of 1974 (“the Act”) was a federal law designed to ensure the safety of drinking water distributed by public water systems to their customers in the United States. The United States Environmental Protection Agency (“EPA”) created regulations to implement the Act.

b. Under the Act and EPA implementing regulations, a “public water system” was defined to include a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system had at least 15 service connections or regularly served an average of at least 25 individuals daily at least 60 days out of the year. The term “public water system” included (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (ii) any collection or pretreatment storage facilities not under such control that were used primarily in connection with such system.

c. EPA regulations defined a “community water system” as a public water system that served at least 15 service connections used by year-round residents or regularly served at least 25 year-round residents.

d. EPA regulations required each community water system to disclose to its water customers on an annual Consumer Confidence Report (“CCR”) the sources of drinking water that the community water system was distributing to its customers. EPA regulations required that each community water system identify for each water source the type of water source (*e.g.*, surface water or ground water), and the commonly used name (if any) and location of the water source. Each CCR was required to be issued for the previous calendar year. With the exception of the first CCR, which was required to be issued on or before October 19, 1999, the CCR for each calendar year was required to be issued on or before the following July 1.

e. As directed by the Act, EPA promulgated maximum contaminant levels (“MCLs”) for various drinking water contaminants, including MCLs for organic contaminants and inorganic contaminants.

f. EPA regulations required each community water system to monitor the type and amount of contaminants in its drinking water through periodic sampling and analysis of the drinking water according to specified test methods. The contaminants for which monitoring was required included inorganic contaminants and organic contaminants.

g. The Act authorized EPA to grant to a state primary responsibility to enforce the Act and the EPA implementing regulations, provided that such state had

(i) adopted and implemented regulations and requirements that were at least as stringent as those promulgated by the EPA under the Act; and (ii) demonstrated that it could effectively execute and enforce those regulations and requirements.

h. Pursuant to the Act and a grant of authority from EPA, the State of Illinois, through the Illinois Environmental Protection Agency (“IEPA”), had primary responsibility for enforcing the Act and the EPA implementing regulations within the State of Illinois. IEPA had promulgated, pursuant to State law, IEPA regulations that implemented the Act and the EPA regulations.

Background Concerning Village of Crestwood

i. The Village of Crestwood (“Crestwood”) was an Illinois municipal corporation that operated a community water system that distributed water to residential, industrial, and commercial customers.

j. Since at least in or about 1973, the substantial majority of Crestwood’s drinking water came from Lake Michigan. Crestwood purchased the Lake Michigan water from the Village of Alsip, Illinois, which, in turn, had purchased it from the City of Chicago. The City of Chicago treated and disinfected the raw Lake Michigan water, and conducted monitoring (sampling and analysis) of the finished Lake Michigan water as required by the Act and the EPA implementing regulations, including the monitoring required for inorganic and organic contaminants. As a result, Crestwood was excused, with respect to its Lake Michigan water only, from performing certain contaminant monitoring, including the monitoring of organic and inorganic

contaminants (other than nitrates and nitrites), that was being performed by the City of Chicago.

k. Beginning no later than in or about 1973, Crestwood regularly supplemented the Lake Michigan water being distributed in its community water system with water drawn from an underground aquifer through a well located on Playfield Drive in Crestwood, Illinois (“Well #1”). Water pumped from Well #1 was combined with Lake Michigan water before being distributed to Crestwood’s water system customers. Crestwood found it necessary to supplement the Lake Michigan water with water pumped from Well #1 in part because of substantial leakage in Crestwood’s water distribution system, which Crestwood officials responsible for the operation of Crestwood’s water distribution system failed to adequately remedy.

l. Due to Crestwood’s use of Well #1, Crestwood was required by EPA regulations periodically to monitor (sample and analyze) its distributed drinking water for inorganic and organic contaminants. Crestwood was required to begin monitoring for organic contaminants no later than on or about December 24, 1975, and for inorganic contaminants no later than on or about January 30, 1991.

m. Crestwood officials responsible for the operation of Crestwood’s water system were aware of the requirement that Crestwood monitor its distributed drinking water for organic and inorganic contaminants, but chose not to conduct the required monitoring.

n. EPA regulations required Crestwood to report to IEPA within 48 hours its failure to comply with, among other things, the monitoring requirements.

Crestwood officials responsible for the operation of Crestwood's water distribution system were aware of this requirement but chose not to inform IEPA about Crestwood's failure to conduct monitoring activities.

o. Pursuant to IEPA regulations, Crestwood was required to submit to IEPA a Monthly Operation and Chemical Analysis Report ("MOR") that disclosed, among other information, the number of hours per month that Well #1 operated and the total amount of water pumped from Well #1. Crestwood officials responsible for the operation of Crestwood's water distribution system were aware of this requirement but chose not to provide IEPA with any information relating to Crestwood's operation of Well #1.

p. Pursuant to the Level of Lake Michigan Act and applicable state regulations, Crestwood was required to submit an Annual Water Use Audit form, also known as an LMO-2 form, to the Illinois Department of Natural Resources ("IDNR") or, prior to in or about 1995, the Illinois Department of Transportation ("IDOT"). The LMO-2 form required Crestwood to report, for a twelve-month period, the amount of water its water system had drawn from Lake Michigan and from Well #1, and to account for the amount of water distributed and lost by its water system. Beginning no later than in or about 1982 and continuing to in or about 2008, Crestwood officials responsible for the operation of Crestwood's water distribution system filed LMO-2 forms that neither reported the amount of water drawn from Well #1, nor accurately accounted for the amount of water distributed and lost by its water system.

Crestwood Individuals

q. Public Official A was an elected Crestwood government official who had and exercised authority over Crestwood's community water system, including the use of Well #1. Beginning in or about 1999 and continuing until in or about 2007, Public Official A signed Crestwood's CCRs on behalf of Crestwood.

r. Defendant FRANK SCACCIA ("SCACCIA") was employed by Crestwood and held various positions, including the position of certified water operator for Crestwood's community water system. As part of his duties as Crestwood's drinking water operator, SCACCIA was responsible for (i) ensuring that water distributed by Crestwood's community water system met all federal and Illinois regulations and requirements, including the requirement to file annual CCRs; (ii) obtaining the raw data that was to be used to complete Monthly Operating Reports ("MORs"); (iii) transmitting raw data for the MORs to defendant THERESA NEUBAUER ("NEUBAUER") so that NEUBAUER could complete the MORs and transmit them to the IEPA; and (iv) serving as a point of contact for IEPA with respect to drinking water compliance issues.

s. NEUBAUER was employed by Crestwood as the Water Department Clerk and Water Department Supervisor. As part of her duties, NEUBAUER prepared the CCRs for signature by Public Official A, arranged for the issuance of CCRs to Crestwood's customers, prepared MORs for distribution to the IEPA based upon information obtained from SCACCIA, and distributed completed MORs to IEPA.

t. During the period of their employment at Crestwood, Public Official A, SCACCIA and NEUBAUER were aware that Crestwood was distributing water pumped from Well #1 to Crestwood's water customers.

2. Beginning no later than in or about January 1987, and continuing until in or about 2008, in the Northern District of Illinois, Eastern Division, and elsewhere,

FRANK SCACCIA and
THERESA NEUBAUER,

defendants herein, along with Public Official A and others known and unknown to the Grand Jury, knowingly and willfully falsified, concealed and covered up by trick, scheme and device a material fact within the jurisdiction of the executive branch of the Government of the United States, namely, that Crestwood was supplementing its Lake Michigan water purchased from Alsip with water drawn from Well #1.

3. It was part of the scheme that, starting no later than in or about January 1987 and continuing until at least early 2008, SCACCIA and NEUBAUER, on an approximately monthly basis, knowingly and intentionally caused the preparation and submission to IEPA of Monthly Operating Reports containing the materially false assertions that, during the month covered by the MOR, (a) Well #1 was in standby status; and (b) no water from Well #1 was distributed to Crestwood's drinking water customers.

4. It was further part of the scheme that, beginning in or about October 1999 and continuing until in or about 2007, Public Official A, SCACCIA and NEUBAUER knowingly and intentionally caused to be prepared, and distributed to IEPA and

Crestwood's drinking water customers, on an annual basis, CCRs that were materially false in that, for the annual period covered by each CCR, the CCR (a) identified the sole source of Crestwood's drinking water to be Lake Michigan water purchased from Alsip; and (b) concealed the fact that Crestwood obtained a portion of its drinking water from Well #1.

5. It was further part of the scheme that, in or about July 2008, SCACCIA knowingly and intentionally caused to be prepared, and distributed to IEPA and Crestwood's drinking water customers, a CCR for calendar year 2007 that was materially false in that, for calendar year 2007, the CCR (a) identified the sole source of Crestwood's drinking water to be Lake Michigan water purchased from Alsip; and (b) concealed the fact that Crestwood obtained a portion of its drinking water from Well #1.

6. It was further part of the scheme that, as a result of their submission of materially false CCRs and MORs to IEPA, Public Official A, SCACCIA and NEUBAUER induced IEPA to refrain from compelling Crestwood to conduct monitoring of its community water system for inorganic and organic contaminants.

7. It was further part of the scheme that, between no later than in or about 1987 and continuing up to and including 2008, Public Official A and NEUBAUER knowingly and intentionally caused to be prepared, and distributed to IDNR (or, prior to in or about 1995, to IDOT), on an annual basis, LMO-2 forms that were materially false in that, for the annual period covered by each LMO-2 form, the LMO-2 form (a) falsely asserted that no water from Well #1 was distributed to Crestwood's drinking

water customers; (b) contained false information concerning Crestwood's unaccounted-for water losses; and (c) on occasion, contained other false information concerning water consumption in Crestwood.

8. It was further part of the scheme that, in or about 1999 and again in or about 2007, in connection with IEPA inspections of Crestwood's community water system, Public Official A and SCACCIA misrepresented, and caused to be misrepresented, to IEPA inspectors that Well #1 was used only on a stand-by basis and did not provide water for Crestwood's community water system.

9. It was further part of the scheme that, in or about 2000, in response to an IEPA request that Crestwood sample its community water system for various contaminants, Public Official A, SCACCIA and NEUBAUER misrepresented, and caused to be misrepresented, to IEPA that Well #1 was on stand-by status for the purpose of emergency use only.

In violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

COUNT TWO

The SPECIAL JULY 2010 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about June 21, 2006, in the Northern District of Illinois, Eastern Division, and elsewhere,

FRANK SCACCIA and
TERESA NEUBAUER,

defendants herein, knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, in a CCR issued to IEPA and Crestwood's drinking water customers for calendar year 2005, the assertion that Crestwood's sole drinking water source was Lake Michigan water purchased from Alsip when, as defendants knew, Crestwood's community water system also regularly distributed water drawn from Well #1 in 2005;

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

COUNT THREE

The SPECIAL JULY 2010 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about June 5, 2007, in the Northern District of Illinois, Eastern Division, and elsewhere,

FRANK SCACCIA and
TERESA NEUBAUER,

defendants herein, knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, in a CCR issued to IEPA and Crestwood's drinking water customers for calendar year 2006, the assertion that Crestwood's sole drinking water source was Lake Michigan water purchased from Alsip when, as defendants knew, Crestwood's community water system also regularly distributed water drawn from Well #1 in 2006;

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

COUNT FOUR

The SPECIAL JULY 2010 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about July 2, 2008, in the Northern District of Illinois, Eastern Division, and elsewhere,

FRANK SCACCIA,

defendant herein, knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, in a CCR issued to IEPA and Crestwood's drinking water customers for calendar year 2007, the assertion that Crestwood's sole drinking water source was Lake Michigan water purchased from Alsip when, as defendant knew, Crestwood's community water system also regularly distributed water drawn from Well #1 in 2007;

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

COUNTS FIVE THROUGH TWENTY-THREE

The SPECIAL JULY 2010 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about each of the dates set forth below, each such date constituting a separate count of this indictment, at Crestwood, in the Northern District of Illinois, Eastern Division, and elsewhere,

FRANK SCACCIA and
TERESA NEUBAUER,

defendants herein, knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, in a MOR filed with IEPA on or about each date specified below, the assertions that, for the month covered by the MOR, (a) Well #1 had been in standby status, and (b) no water from Well #1 had been distributed to Crestwood's drinking water customers; when, as defendants knew, Well #1 had not been on standby status and water from Well #1 had been distributed to Crestwood's water customers during the particular month covered by the MOR;

Count	Month Covered	Date On or About Which MOR Was Submitted to IEPA
5	June 2006	September 19, 2006
6	July 2006	September 19, 2006
7	August 2006	April 12, 2007
8	September 2006	April 12, 2007

Count	Month Covered	Date On or About Which MOR Was Submitted to IEPA
9	October 2006	April 12, 2007
10	November 2006	April 12, 2007
11	December 2006	April 12, 2007
12	January 2007	November 6, 2007
13	February 2007	November 6, 2007
14	March 2007	November 6, 2007
15	April 2007	November 6, 2007
16	May 2007	November 6, 2007
17	June 2007	November 6, 2007
18	July 2007	November 6, 2007
19	August 2007	November 6, 2007
20	September 2007	November 6, 2007
21	October 2007	November 14, 2007
22	November 2007	December 15, 2007
23	December 2007	January 9, 2008

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

A TRUE BILL:

UNITED STATES ATTORNEY